

Message Text

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ACTION OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 /024 W

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P 290730Z APR 76

FM AMEMBASSY TEHRAN

TO SECSTATE WASHDC PRIORITY 6745

UNCLAS TEHRAN 4327

PLEASE PASS OPIC FOR CLARK BATCHELDER

E.O. 11652: N/A

TAGS: EINV, IR

SUBJECT: OPIC: INSURANCE COVERAGE FOR CONSTRUCTION
PROJECTS

REF: STATE 084575, 75 STATE 203791

1. ECON COUNSELOR AND CLARK BATCHELDER OF OPIC MET DURING
BATCHELDER VISIT TEHRAN WITH DR. JAMSHID ASHRAFI, UNDER
SECRETARY FOR INVESTMENT AND FOREIGN AID, MINISTRY OF
ECONOMIC AFFAIRS AND FINANCE TO DISCUSS STILL PENDING
QUESTION OF GOI APPROVAL FOR OPIC INSURANCE COVERAGE FOR
CONSTRUCTION/SERVICE CONTRACTS.

2. BACKGROUND: DR. ASHRAFI LAST SAID (75TEHRAN 12448)
THAT, NOTWITHSTANDING DR. MEHRAN'S ASSURANCES, THE LEGAL
OFFICE OF MINISTRY NOT PREPARED GIVE WRITTEN CONFIRMATION
OF VERBAL ASSURANCES THAT THERE WAS NO PROBLEM ATTACHED TO
ISSUANCE OF SUCH INSURANCE. DURING APRIL MEETING ASHRAFI
GAVE FORM TO LEGAL SECTION'S RESERVATIONS, AS FOLLOWS:

3. GOI ARGUMENT: MINISTRY ARGUES THAT SERVICE CON-
TRACTORS HAVE LEGAL RECOURSE UNDER IRANIAN COMMERCIAL
CODE AND JUDICIAL SYSTEM IF THEY BELIEVE THAT TERMS
OF THEIR CONTRACTS HAVE NOT BEEN MET. CONSIDERING
THE MUTUAL OBLIGATIONS OF PARTIES TO CONTRACTS, THE
MINISTRY SEES NO NEED TO "REPLACE"NORMAL COMMERCIAL/
JUDICIAL REMEDIES WITH GOVERNMENT GUARANTEES.

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4. MINISTRY SUGGESTIO : DR. ASHRAFI SUGGESTED THAT OPIC TRANSMIT AN INFORMAL LETTER THROUGH THE EMBASSY STATING THAT IN SUCH CASES THE GOVERNMENT OF IRAN COULD BE APPLIED TO AS A GUARANTOR ONLY IF ALL REMEDIES UNDER LAW HAD BEEN EXHAUSTED. ASHRAFI RECOMMENDED THAT THE LANGUAGE OF THE LETTER LIMIT THE USG TO "RESERVING THE RIGHT TO BRING TO THE ATTENTION OF THE APPROPRIATE AUTHORITIES OF THE GOVERNMENT OF IRAN ANY GRIEVANCE WHICH A US COMPANY WITH A CON" TRACTUAL SERVICE ARRANGEMENT IN IRAN MAY HAVE." HE SPECIFICALLY DISALLOWED THE STRONGER LANGUAGE "RE-SERVES THE RIGHT TO MAKE DIPLOMATIC REPRESENTATIONS."

5. DISCUSSION: THE MINISTRY APPEARS INTENT ON MAINTAINING THE CLEAR DISTINCTION WHICH EXISTS UNDER IRANIAN LAW BETWEEN EQUITY JOINT VENTURE ARRANGEMENTS (INVESTMENT) AND CONTRACTUAL OBLIGATIONS FOR PURPOSES OF COVERAGE UNDER THE 1957 AGREEMENT AS AMENDED. THE ARGUMENT IS SOMEWHAT SPECIOUS, HOWEVER, BECAUSE ANY SIZEABLE CONSTRUCTION CONTRACTS ARE LIKELY TO BE SIGNED WITH A GOVERNMENTAL AGENCY, AND AS DR. ASHRAFI HIMSELF POINTED OUT, ALTHOUGH CONTRACTORS DO HAVE RECOURSE UNDER LAW, THEY VERY RARELY SUE GOVERNMENT AGENCIES IF THEY WISH TO OBTAIN FUTURE CONTRACTS. LEGAL PROCESSES IN IRAN ARE ALSO VERY LENGTHY AND CAN BE COSTLY SO THAT A FOREIGN CONTRACTOR WOULD BE UNLIKELY TO OBTAIN RECOURSE IN A TIMELY FASHION. IN A MORE PRAGMATIC SENSE, HOWEVER, THE QUESTION IS ALMOST ACADEMIC AS THERE APPEAR TO BE FEW PENDING APPLICATIONS WHERE THE PROJECTS WOULD NOT BE CLASSIFIED AND APPROVED UNDER THE EQUITY PROVISIONS OF THE OPIC AGREEMENT(E.G. STARRETT CORP. PROJECT, IN PART AT LEAST, WOULD PROBABLY BE CONSIDERED AS AN EQUITY INVESTMENT SHOULD THE APPLICATION BE PURSUED). THE ONLY CLEAR EXCEPTION WOULD BE INFRASTRUCTURE CONSTRUCTION PROJECTS SUCH AS MORRISON-KNUDSEN'S ROAD BUILDING CONTRACTS. ALTHOUGH CONSTRUCTION AND OTHER SERVICE COMPANIES DO HAVE THE OPTION OF REGISTERING AND DOING BUSINESS IN IRAN AS BRANCH OFFICES OF A FOREIGN FIRM, MOST ENTER INTO JOINT VENTURE ARRANGEMENTS WITH LOCAL FIRMS EITHER FOR THE LIFE OF A PARTICULAR PROJECT

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OR ON SPECULATION, IN WHICH CASES APPLICATIONS FOR PROJECT APPROVAL WOULD PROBABLY BE CONSIDERED UNDER THE EQUITY DEFINITION.

6. RECOMMENDATION: IF OPIC WISHES PROCEED ALONG LINES SUGGESTED BY ASHRAFI, A LETTER FROM OPIC SHOULD BE PREPARED FOR TRANSMISSION THROUGH THE EMBASSY. IF OPIC BELIEVES IT CANNOT CONCUR IN DR. ASHRAFI'S ARGUMENT THAT

TREATMENT OF CONSTRUCTION CONTRACTUAL ARRANGEMENTS SHOULD BE DIFFERENTIATED FROM REGULAR INVESTMENT EQUITY COVERAGE PROCEDURES, IT IS LIKELY THAT THE GOI WOULD REQUIRE RENEGOTIATION OF THE 1957 AGREEMENT, AS AMENDED IN 1970. AS PAST EXPERIENCE INDICATES, LIKELIHOOD OF RENEGOTIATING AGREEMENT IN A TIMELY FASHION IS NOT GREAT. ASHRAFI SUGGESTION OF DECEMBER THAT OPIC PURSUE APPLICATION IN CONSTRUCTION CONTRACT CATEGORY STILL STANDS AND EMBASSY SUGGESTS THAT SUCH AN APPLICATION BE PURSUED TO TEST THE QUESTION DIRECTLY. OPIC MAY WANT TO CONSIDER ALSO THAT THE GOI HAS NEVER OBJECTED IN WRITING TO PARA 2 OF LETTER TRANSMITTED IN REF B, NOR VERBALLY, UNTIL THE APRIL 12 MEETING AND THEREFORE TECHNICALLY OPIC WOULD BE WITHIN ITS PROCEDURAL RIGHTS IN ISSUING COVERAGE AS INDICATED.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INSURANCE, CONSTRUCTION, CONTRACTS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976TEHRAN04327
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760162-0845
From: TEHRAN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t1976046/aaaaaeov.tel
Line Count: 130
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OPIC
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE 84575, 76 STATE 203791
Review Action: RELEASED, APPROVED
Review Authority: hackerp0
Review Comment: n/a
Review Content Flags:
Review Date: 20 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 MAY 2004 by SilvaL0>; APPROVED <24 JAN 2005 by hackerp0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: OPIC: INSURANCE COVERAGE FOR CONSTRUCTION PROJECTS
TAGS: EINV, IR, (ASHRAFT, JAMSHID)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006